



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Colin Whitehurst

Appl. No.: 10/625,701

Filed: July 24, 2003

For: **Therapeutic Light Source and
Method**

Confirmation No.: 9946

Art Unit: 3739

Examiner: Henry M. Johnson III

Atty. Docket: 1487.0320001

Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated January 9, 2006, Applicant hereby provisionally elects Group II, Species 4, depicted by Figures 20 and 21. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made **with traverse**. Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

The Examiner indicates that Group I, consisting of a single claim, requires a search of only one subclass. The Examiner also indicates that Group II, which includes the remainder of the claims in the application, also requires a search of only one subclass. Since only two subclasses would need to be searched for the entire claim set to be examined, Applicant respectfully submits that it would not be an undue burden on the Examiner to examine both Group I and Group II, as the claim in Group I includes similar features as the claims of Group II. Reconsideration and withdrawal of the Restriction Requirement is thus respectfully requested.

The Examiner further identifies five species within Group II. For reasons that are not apparent to the Applicant, the Examiner defines the five species by the drawing figures rather than by the claims. For example, Species 4 is defined as Figures 20 and 21. In another example, the Examiner defines Species 5 as including three arrays not shown in any figure, which is confusing as both Figures 20 and 21 (defined as Species 4) include an example having three arrays as one of their features. Because the drawings show a variety of features, it is difficult to understand the Examiner's basis of distinction between the species. It is thus difficult to determine between which claims the Applicant is required to elect from. More importantly, Applicant strenuously notes that the drawing figures are provided as an aid in describing the invention. The invention, as defined by the claims, is not limited to the examples provided in the drawings.

Nevertheless, since Figures 20 and 21 illustrate examples of rigid array embodiments of the invention, Applicant interprets Examiner's identification of Species 4 as claims directed to rigid array embodiments. Species 4 thus includes claims 9-10 and 62-66. Applicant hereby provisionally elects Species 4, including claims 9-10 and 62-66 for prosecution. This election of species is made with traverse.

All of the claims 9-10, 12-15, 18-20, and 34-66 are directed to LED apparatuses. Thus, the inventions embodied by claims 9-10, 12-15, 18-20, and 34-66 are sufficiently related to justify inclusion in a single patent application. Furthermore, the Examiner concedes that only a single subclass (cl. 607/subcl. 088) would need to be examined for the entire Group II. Thus it would not be an undue burden on the Examiner to examine

all of claims 9-10, 12-15, 18-20, and 34-66 in Group II. Reconsideration and withdrawal of the election of species requirement is requested.

It is believed that extensions of time are not required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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